K

1942.

K

File No. Cattle Trespass II/42

Legal **DEPARTMENT**

B. **BRANCH**

Subject:—

"Rules and Notifications under the Cattle Trespass Act, 1871.

P-6=E

File No. Cattle Tresspass II/42

Std. Sectt. Slip 24 B a.

312-B.

CONTENTS

Legal Department File No 1 Cattle Treas II/42

Sr. No.	Compilation No.	Subject	Pages
		Cattle Trespass Act 1871	
1.	----	Section 31(a) Notification under	1-4
2.	U.R. to R.D. No5203 dated 25/6/1942	Opinion Whether Provincial Legistature has power to issue orders etc--	5-8
3.	U.R. to R.D. No 5509	Opinion whether executive orders would be sifficient	9-10
4.	R.D. Notification No.10071/24 and d. 26/9/42 and 16/10/42	section 31(a) Notification under	11-14
5.	G.N.R.D. No. 4874/33 dated 16/10/1942	Government of India Act-- Section 241 (1)(b)-- Notification under	15-18

7/5

7/5

R.I. No. 3010 dated 26.3.42.

Submitted.

Under G.N. R.D. No. 10071/24, dated the 26th November 1941, the functions of the District Magistrate under section 5 of the Cattle-trespass Act, 1871 were transferred to the Municipalities of Rajapur and Khed in the Ratnagiri district. It is now proposed to transfer the functions of the District Magistrate under sections 4 and 14 also to the said Municipalities. The draft notification on page 23 ante in this respect is sent to the R.L.A. for scrutiny.

2. A revised draft notification is sent herewith.

3. With this office U.R. to R.D. No.8294 dated 22nd September 1941, the R.D. was furnished with a revised draft notification transferring to the Municipality of Dhond in the Poona Dist., the functions of the Magistrate of the District under section 5 of the Cattle-trespass Act, 1871, which has been published in G.N.R.D. No.10071/24 dated 15th October 1941. R.D. was requested the to consider whether it would not be desirableto transfer to the said Municipality also the functions of the District Magistrate under Sections 4 and 14 of the said Act. It will appear from R.D. note on p.15 ante that in this case R.D. has similarly issued G.N.R.D. No.10071/24 dated 26th November 1941 (p.19) transferring to the Municipalities of Rajapur and Khed in the Ratnagiri district the functions of the Magistrate of the district under section 5 of the Cattle-trespass Act, 1871 and it is now proposed to transfer to the

bodies the functions of the Magistrate of the district under sections 4 and 14 also, as-- suggested by the R.L.A. in the case of the Dhond Municipality. Therefore, the draft notification proposed by the R.D. on p.23 for this purpose is legally in order. The accompanying revised & draft ~~xx~~ draft notification is put up for approval. If it is approved by the A.L.R., the papers may be returned to the R.D. with the reply.

A revised draft notification is sent herewith.

Notification.

Revenue Department.
Bombay Castle, 1942.

No.10071/24. - In exercise of the powers conferred by cluase (a) of section 31 of the Cattle Trespass Act, 1871 (1 of 1871) the Government of Bombay is pleased to — transfer to the Muncipalities of Rajapur and Khed in the Ratnagiri district the functions of the Magistrate of the District under sections 4 and 14 of the said Act, within the local areas subject to the jurisdiction of the said Municipalities.

The cattle-trespass Act, 1871

By order of the Governor of Bombay,

M. J. Desai,
Secretary to Government.

Point (1) : In the draft Circular at pages 33-55 ante no mention is made of cantonments on the assumption that the Provincial Government has no control over them from 1st April 1937. This assumption leads to the question as to whether the executive authority of Provincial Government extends to cattle pounds managed by Cantonment Boards since after 1st April 1937.

The subject of "pounds and the prevention of cattle trespass" falls in the Provincial Legislative List in the Seventh Schedule to the Government of India Act, 1935 (entry 20 in the List). Under section 100(3) of the Act the Provincial Legislature has subject to the two preceding sub-sections of that section and the Federal Legislature has not, power to make laws for the Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List. Under section 49 of the Act the executive authority of each province extends to the matters with respect to which the Legislature of the Province has power to make laws. In virtue of these provisions the Provincial Government will have control over cattle-pounds established in the Province irrespective of the fact that the local athority put by the Province in management of them is under the control of the Central Government. It is on this prnciple that the Government of India (Adaptation of Indian Laws) Order, 1937, has proceeded while adapting the Cattle-trespass Act,1871. The Adaptation order has retained the powers under the Act with the Provincial Government in respect of all local authorities and no exception has been made in the case of Cantonment Boards. It is true that in view of entry 2 in the Federal Legislative List, namely, "Local self-government in cantonment areas" it will be within the competence of the Federal Legislature to provide for matters relating to pounds and the prevention of cattle trespass, which though otherwise within the legislative competence of the Provincial Legislature, may be considered as necessarily incidental to effective legislation upon the subject of local self-government in cantonment areas. But the field of such Federal Legislation

would be clear of the Cattle Trespass Act and the pounds established under that Act by the Province. In other words the pounds and pound-keepers under a provision in the Cantonments Act will be distinct from the pounds and pound keepers under the Cattle Trespass Act, and both will stand uncurtailed mutually until there is actual overlapping of particular legal provisions. (See Attorney General for Canada vs. Attorney General for British Columbia 1940 A.C. 111 at p.118). The Cantonments Act of 1924 does not contain any provisions regulating cattle pounds nor does it appear that there is any other law passed by the Central Legislature on the subject of cantonments which provides for matters relating to pounds. In the result the provincial Government can as matter stand at present exercise control over Cantonment Boards in so far as cattle pounds established under the Cattle Trespass Act are concerned.

Point (2): It is true as stated by Secretary, R.D. that under sections 7 and 12 of the Cattle Trespass Act powers are exercised by the Provincial Government and not by the District Magistrates. As regards the exercise of the powers of the Provincial Government under section 7 by the local authorities, they cannot be exercised by them unless they are transferred to them under section 31 of the Act. It may be pointed out in this connection that in no case can the local authorities perform the function of keeping registers, for that function has been assigned under section 7 to a pound-keeper and cannot as such be transferred to a local authority under section 31. The statement in clause (3) of para.2 of the draft circular that the local authorities may keep the prescribed register is not therefore correct.

Point (3): It is for the R.D. to verify whether powers under section 4 of the Act have been delegated to all local bodies or not.

Point (4): The draft notification under section 6 sent to the R.L.A. on the linked file is being

JPE
(24c)

scrutinized and will be sent shortly to the R.D.

2. The draft notification at page 37 ante as slightly revised is in order. The draft notification proposes to transfer the functions of the District Magistrate under section 17 of the Act. The function which the the District Magistrate performs under this section is to hold the surplus unclaimed proceeds of the sale in deposit for 3 months and thereafter as part of the revenues of the Province. As pointed out in R.L.A.'s opinion No. 544 dated the 21st January 1941 no useful purpose will be served by transferring this function of the District Magistrate to the Villagex panchayats or for the matter of that to any local body. The R.D. should therfore consider whether the reference to section 17 should not be omitted from the draft notification.

O.C.

Id/- P. N. M.
24/6
Remembrancer of Legal Affairs.

U.R. to R.D. No. 5203 dated the 25th June 1942.

JPE
(4c) 3/5/56.

The R.D. draft notification at pages 85-87 ante is, as revised, in order.

2. For reasons stated in R.L.A.'S opinion No. 5203 dated the 25th June 1942, under the draft notification at page 85-87 ante the R.D. can if it so desires delegate the power of the appointment of pound-keeper also to the Cantonment Boards.

3. As regards the draft notification, at p.89 ante, the object may be achieved by necessary executive orders, provided the statutory requirement of section 240(2) of the overnment of India Act, 1935, is not infringed. The question of dismissal does not strictly fall within the scope of section 241(2) of the Act, as dismissal is an aspect of tenure and not a condition of service. (See Suraj Narain vs. U.P. Province 1941 F.L.J. 22). Section 240 of the Act appears to Warrant executive orders empowering an authority to dismiss a Crown servant, subject to the requirements of sub-sections (2) and (3) of that section. (See the words "authhority empowered" in clause (b) of the Proviso to sub-section (3). No notification as proposed by R.D. at page 89 is therefore necessary.

Id/- P.N.M.
4/7/

Remembrancer of Legal Affairs.

U.R. to R.D., No. 5509, dated the 6th July 1942.

JPE
2/5/56
(4c)